IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8564 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT INDUSTRIAL COOPERATIVEBANK LTD

Versus

RAMESHBHAI N PATEL

Appearance:
1. Special Civil Application No. 8564 of 1988
MR DIPAK R DAVE for Petitioner No. 1
MR AK TRIVEDI for Petitioner No. 1
RULE SERVED for Respondent No. 1
NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 10/01/2002

ORAL JUDGEMENT

#. Heard Mr.Deepak R. Dave, learned advocate appearing on behalf of the petitioners. Though, notice of RULE has been served, none remained present on behalf of the respondents workmen nor any appearance has been filed by the respondents workmen.

#. In the present petition, the petitioner has challenged the order passed by the Labour Court, Baroda in Recovery Application No.1531/1986 dated 1st November, 1988 wherein, the labour Court has granted full wages during the suspension period in favour of the respondent No.1. This Court has issued RULE and granted ad-interim relief by staying operation of the order dated 29th December, 1988. Thereafter, this Court has passed another order on date 6th February, 1989 confirming the interim relief in terms of para-8[B] on condition that petitioner shall deposit the entire awarded amount before the Labour Court, Baroda within four weeks from today. However, liberty reserved to the respondent No.1 workman to withdraw said amount on furnishing the security to the satisfaction of the labour court. Learned advocate Mr.Dave appearing on behalf of the petitioner has made statement before this Court that in pursuance of the interim order passed by this Court on 6th February, 1989, the petitioner has already deposited the said amont before the Labour Court, Baroda. Learned advocate Mr.Dave has also submitted that the Labour Court has granted full wages for suspension period only on the ground that the petitioner bank is not having any statutory rules for giving 33 % suspension allowance during the suspension period, but it was considered to be a practice and therefore the labour court has applied provisions of model standing order and granted full wages for suspension period. The Labour Court has also relied upon decision reported in [II] LLJ 1987 pg.225, wherein it was observed that when there is not specific condition in respect of subsistence allowance, in that case, during the suspension period, employee concerned is entitled full wages for suspension period. Therefore, ultimately the labour court has granted total amount of Rs.17,474/- in favour of the respondent workman. In view of this fact, learned advocate Mr.Deepak Dave has raised contention that there was no existing right of the respondent No.1 to have full wages as subsistence allowance because there was no such service rules in petitioner bank which entitled the respondent No.1 to full wages of suspension period. The second submission is that at the relevant time, the petitioner bank had not produced relevant service rules of the petitioner bank

but learned advcoate Mr.Deepak Dave, has placed on record along with further affidavit dated 18th December, 2001 the service rules of the petitioner bank. The Rules came into force on 2nd July, 1973. The relevant rules [Item No.10.4] is quoted as under :-

"10.4 An employee may be placed under suspension pending the inquiry by the Officer empowered to pass the final order under this regulation. During the period of suspension he shall receive subsistence allowance at a rate not exceeding 1/3 rd [one - third] of his substantive pay with all other allowances. In case no action is taken as a result of the inquiry, he shall be refunded the difference between the amount paid and the emolument which he would have received but for such suspension, for the period he was under suspension. The period during which an employee is under suspension shall, if he is not dismissed from the service, be treated as period spent on duty or leave as the officer who passes the final order, may direct."

#. Relying upon the provisions quoted above, learned advocate Mr.Deepak Dave appearing on behalf of the petitioner has submitted that according to the Service Rules, the respondent No.1 is not entitled amount beyond one third wages as subsistence allowance. Therefore, the petitioner bank has paid one third subsistence allowance to the respondent No.1 which is according to the service rules and therefore, the labour court has committed gross error coming to its conclusion in absence of any existing right in favour of the respondent No.1. He also submitted that Section 33-C proceedings are based on existing right and the labour court has no power to consider new right or new condition of service. Therefore, he submitted that the award passed by the labour court in recovery proceeding is required to be quashed and set aside.

#. However, learned advocate Mr.Dave has made a fair statement before this Court that in pursuance of the order passed by this Court on 6th February, 1989 while granting interim relief in favour of the petitioner bank, the amount had already been deposited by the petitioner bank before the labour court, Baroda and further the petitioner bank will not claim refund of the said amount from the respondent workmen if the amount is already received by the respondent No.1 on furnishing the security from the labour court. Thus, it is asserted

that the petitioner bank will not claim refund of the said amount from the respondents workmen because subsequently the respondent No.1 - workman was already dismissed from the service as also, the fact that long period has been elapsed till date from the year 1988.

#. Therefore, the labour court, considering the basic facts has observed by the labour court that during suspension period, in absence of the service rules, only on the basis of the practice, one third wages had been paid as subsistence allowance is illegal and the respondent workman is entitled to full wages as subsistence allowance. It has come on record that at the relevant time, the petitioner bank has not produced the service rules but now the service rules produced on record before this Court. Therefore, considering all these aspects of the matter and the award of the labour court so also looking to the service rule 10.4, according to my opinion, one third wages as subsistence allowance seems to be based upon the service rules and when there is no specific service rules / contract between the parties which provides the rate of subsistence allowance that may be required to be paid by the employer to such employee and therefore, the respondent No.1 is entitled to subsistence allowance. Further considering all the aspects of the matter, though the respondent No.1 was not having any existing right before the labour court to have full wages for suspension period but now in view of the specific Rule 10.4 as quoted above, which clearly empowers and binds the petitioner bank to pay one third wage as subsistence allowance to the concerned respondent No.1. Therefore, according to my opinion, the order passed by the labour court dated 1st November, 1988 is required to be quashed and set aside.

#. In the result, present petition is allowed. The order passed by the Labour Court, Baroda in Recovery Application No.1531 / 1986 dated 1st November, 1988 is hereby quashed and set aside. However, in view of the statement made by learned advocate Mr.Deepak Dave appearing on behalf of the petitioner bank, it is directed to the petitioner bank not to claim any amount from the respondent No.1 despite of the fact that this Court has quashed and set aside the order impugned in this petition. It is also made it clear that whatever amont has been deposited by the petitioner bank before the labour court, Baroda in pursuance of the order dated 6th February, 1989, the petitioner bank will not claim any amount from the respondent No.1 provided if the said amount is already received by the respondent No.1. It is also made it clear that the respondent No.1 will not have

to refund said amont to the petitioner bank. However, if the said amount is not received by the respondent No.1, it is directed to the labour court, Baroda to pay the said amount to the respondent No.1 without any delay.

In view of above discussion, present petition succeeds and the same is allowed accordingly. Rule is made absolute to the extent indicated above. No order as to costs.

Date : 10-1-2002 [H.K.Rathod, J.]

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